

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 13-04

STREAK PRODUCTS, INC.

and

SYX DISTRIBUTION INC.

COMPLAINANT,

v.

UTi, UNITED STATES, INC.,

RESPONDENT.

**COMPLAINANTS' OPPOSITION TO UTi'S AMENDED MOTION FOR
ENLARGEMENT OF TIME TO SUPPLEMENT DISCOVERY**

Streak Products, Inc. ("Streak") and SYX Distribution Inc. ("SYX") (collectively "Complainants") oppose the Motion for Enlargement of Time to Supplement Discovery filed by UTi, United States, Inc. ("UTi").

Summary

UTi's Motion is predicated upon the fact that it purportedly did not know what information and documents it needed to produce in discovery until after Streak amended its complaint to add SYX as a Co-Complainant. As set forth below, this assertion is belied by the documents UTi itself already produced in discovery. Even setting this aside, however, the plain truth is that most of the information and documents sought should have been produced by UTi long ago, regardless of whether UTi was providing transportation services for Streak or SYX.

Given that the Complaint was filed in this case more than a year ago, on April 12, 2013, and that discovery was served at that time, there is no legitimate reason for further extending the deadline for UTi to produce its already long tardy discovery responses.

UTi's Contention That it Only Recently Learned That it Was Providing Transportation Services for Streak is Baseless

In light of the Presiding Judge's ruling compelling UTi to prove responsive discovery, the Complainants will not belabor the fact that UTi has failed to comply with its discovery obligations. Given that UTi is now seeking to further extend the deadline for producing documents responsive to the long-outstanding discovery requests on the grounds that it purportedly did not know that it had been providing transportation services for Streak, the Complainants feel obligated to point out the fallacies in UTi's position.

First, Streak provided UTi with a chart showing a list of shipments handled by UTi for Streak from the time period of 2009 through 2011, back in December of 2012, four months before this Complaint was filed, and more than 16 months ago. *See* email to UTi's General Counsel, George Hassapis, attached as Exhibit A. Second, the very first page of the documents belatedly produced in discovery *by UTi* was an invoice stating "by order and on account of STREAK PRODUCTS." There were almost 150 such invoices in the document produced by UTi and virtually every one of them bore the statement "by order and on account of STREAK PRODUCTS." *See* Exhibit B. In addition, documents produced in discovery by UTi from its shipping files, contain a memorandum stating:

To Whom It May Concern,

Systemax, Inc. will be acting as the importer of record for All Shipments in the United States designated for its subsidiary Streak Products Inc.

See Exhibit C.

Finally, Importer Security Filings submitted by UTi to U.S. Customs and Border Protection show that UTi listed Streak as the buyer of the cargo UTi was transporting. *See* Exhibit D.

Under these circumstances, for UTi to contend that it did not know that it was transporting cargo for Streak and that it could not have started looking for responsive documents until recently is baseless.

Many of the Documents Sought Are Not Streak Shipping Records

As reflected in Your Honor's Order of April 7, 2014, Streak's discovery seeks information and documents not limited to services directly provided to Streak by UTi. Thus, for example, the Complainants sought information and documents related to amounts UTi was charging other shippers for transportation services, documents produced to BOE as part of UTi's self-disclosure, UTi compliance audits, and amounts it paid carriers for transportation services provided. Thus, even if one accepts UTi's extremely implausible contention that it did not know it was providing transportation services for Streak until recently, there is simply no reason why the information and responsive documents sought in those requests, most of which were sought more than a year ago, should not have been produced long ago.

Conclusion

UTi concedes that it charged Streak and SYX freight rates different than those reflected in its published tariff. Indeed, after Streak raised concerns with UTi that Streak had been charged rates not reflected in UTi's published tariff, UTi filed a Voluntary Disclosure with the BOE acknowledging that it had acted in violation of the Shipping Act. This, therefore, should be a relatively straightforward matter, as reflected in Your Honor's Order denying UTi's Motion to Dismiss. Due to UTi's obfuscation and tactics, however, the action has already lingered longer

than necessary and the Complainants have incurred unnecessary time and expense. In light of those considerations, consistent with Your Honor's Order of April 7, 2014, UTi should be compelled immediately to provide responsive discovery so that this matter promptly can be resolved.

Respectfully submitted,



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Dated: April 21, 2014

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was delivered to the following addressees at the addresses stated by depositing same in the United State mail, first class postage prepaid, and/or by electronic transmission, this 21st day of April 2014:

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